



THE ATTORNEY GENERAL OF TEXAS

AUSTIN, TEXAS 78711

JOHN L. HILL
ATTORNEY GENERAL

February 13, 1975

The Honorable B. L. DeBerry
State Highway Engineer
Texas Highway Department
11th & Brazos
Austin, Texas 78701

Opinion No. H- 525

Re: Authority of State Highway Department to make expenditures requested to qualify for projects under 23 U.S.C. sec. 405.

Dear Mr. DeBerry:

You have requested our opinion as to whether the Highway Department can expend State highway funds pursuant to article 6674d-1, V. T. C. S., in order to qualify for and secure federal funds pursuant to 23 U.S.C. sec. 405. You advise that the roadways to be covered are basically city streets and county roads which are not part of the state highway system of Texas.

The pertinent provisions of 23 U.S.C. sec. 405, are as follows:

(a) The Federal-aid safer roads demonstration program shall consist of all public roads or segments thereof not on a Federal-aid system needing improvements to correct safety hazards selected or designated by each State subject to the approval of the Secretary.

(b) . . . including projects to improve highway marking and signing, to eliminate roadside obstacles, to eliminate hazards at railroad-highway grade crossings and to correct high-hazard locations, identified by accident reporting, traffic records and hazards analysis systems

. . . .

(d) For the purposes of this section, the term "public road" means any road under the jurisdiction of and maintained by a public authority and open to public travel and which is not on a Federal-aid system.

Article 6674d-1, V. T. C. S., provides:

From and after the effective date of this Act, all moneys appropriated by the Congress of the United States and allocated by the Secretary of Agriculture of the United States to the State Highway Department for expenditure on roads not on the system of State Highways, may be expended by and through the State Highway Department in conjunction with the Bureau of Public Roads, for the improvement of such roads and said Federal Funds may be matched, or supplemented by such amounts of State funds as may be necessary for proper construction and prosecution of the work . State funds shall not be used exclusively for the construction of roads not on the System of State Highways, the expenditure of State funds on said roads being limited to cost of construction and engineering, overhead and other costs on which the application of Federal Funds is prohibited or impractical. (Emphasis added)

Article 6672, V. T. C. S., provides:

Any funds for public road construction in this State appropriated by the Federal Government shall be expended by and under the supervision of the Department only upon a part of the system of State Highways. (Emphasis added)

Article 6674d-1 repealed any statute in conflict to the extent of such conflict. Acts 1939, 46th Leg., p. 579. Since article 6672 was passed in

1917, it has therefore been modified by 6674d-1 and no longer prohibits the use of state funds to match or supplement federal grants for roads not on the system of State highways.

Article 8, section 7a, of the Texas Constitution states:

Subject to legislative appropriation, allocation and direction, all net revenues remaining after payment of all refunds allowed by law and expenses of collection derived from motor vehicle registration fees, and all taxes, except gross productions and ad valorem taxes, on motor fuels and lubricants used to propel motor vehicles over public roadways, shall be used for the sole purpose of acquiring rights-of-way, constructing, maintaining, and policing such public roadways, and for the administration of such laws as may be prescribed by the Legislature pertaining to the supervision of traffic and safety on such roads; and for the payment of the principal and interest on county and road district bonds or warrants voted or issued prior to January 2, 1939, and declared eligible prior to January 2, 1945, for payment out of the County and Road District Highway Fund under existing law; provided, however, that one-fourth (1/4) of such net revenue from the motor fuel tax shall be allocated to the Available School Fund; and, provided, however, that the net revenue derived by counties from motor vehicle registration fees shall never be less than the maximum amounts allowed to be retained by each County and the percentage allowed to be retained by each County under the laws in effect on January 1, 1945. Nothing contained herein shall be construed as authorizing the pledging of the State's credit for any purpose. (Emphasis added)

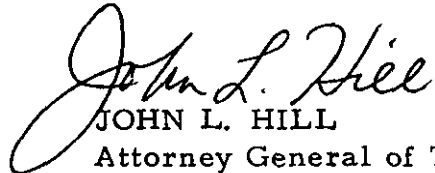
This section requires certain revenues to be expended only for "public roadways." Since 23 U.S.C. sec. 405 applies only to "public roads or segments thereof," expenditures of State funds pursuant to

article 6674d-1 for the purpose of supplementing these federal funds are consistent with article 8, section 7a of the Texas Constitution.

SUMMARY


Article 6674d-1 provides the State Highway Department authority to expend State funds to supplement or match federal funds received pursuant to 23 U.S. C. sec. 405.

Very truly yours,


JOHN L. HILL
Attorney General of Texas

APPROVED:


DAVID M. KENDALL, First Assistant


C. ROBERT HEATH, Chairman
Opinion Committee

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